

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying approval of partial assignment of noncompetitive oil and gas lease AA-49169-D.

Set aside and remanded.

1. Oil and Gas Leases: Assignments or Transfers

When conflicting oil and gas lease assignments are filed with BLM, suggesting a controversy as to the validity of either or both of those assignments, the denial or approval of either of those assignments is improper; rather, BLM should suspend action on the assignments, maintaining the status quo until presented with either evidence that the parties have resolved the dispute or a copy of a court decree concerning the matter in controversy. However, if BLM has mistakenly approved one of the assignments and subsequently denied approval of the other assignment, the approval will not be rescinded, but the denial will be set aside for a period of time sufficient to allow the parties to institute litigation or take other action to resolve the dispute. Failure to take appropriate action within the time allowed will result in confirmation of the approved assignment.

APPEARANCES: Robert Walli, Ritzville, Washington, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert Walli has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 14, 1986, denying approval of a partial assignment to him of the record title interest to noncompetitive oil and gas lease AA-49169.

Effective May 1, 1984, BLM issued noncompetitive oil and gas lease AA-49169 to Chapin and Associates, Inc. (Chapin), for 640 acres of land situated in sec. 35, T. 4 S., R. 1 E., Copper River Meridian, Alaska, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). On October 16, 1984, appellant filed with BLM a partial assignment

of the record title interest to lease AA-49169 from Chapin to appellant, with respect to 80 acres of land described as the SE 1/4 SE 1/4 and SW 1/4 SE 1/4 sec. 35. The assignment form was signed by Chapin on October 3, 1984. The assigned portion of the lease was tentatively assigned serial number AA-49169-D. In its May 1986 decision, BLM denied approval of the partial assignment because the lands had "previously been assigned and are no longer available."

The record indicates that another partial assignment of the record title interest to lease AA-49169 had been filed with BLM on September 4, 1984. This constituted an assignment from Chapin to Francis E. Zarr (Zarr) with respect to 160 acres of land described as the SE 1/4 sec. 35, T. 4 S., R. 1 E., Copper River Meridian, Alaska. The assignment form had been signed by Chapin on August 2, 1984. By decision dated March 14, 1986, BLM held the Zarr assignment for denial because Zarr had failed to sign and date the assignment form. BLM allowed Zarr 30 days from receipt of the March 1986 decision to complete the form. A completed assignment form was filed with BLM on March 27, 1986. On May 14, 1986, BLM approved the partial assignment of lease AA-49169 to Zarr, effective April 1, 1986. The assigned portion of the lease was given serial number AA-49169-J.

In his statement of reasons for appeal, appellant asserts that he purchased the partial assignment of lease AA-49169 from Chapin for \$ 4,000 on February 8, 1984, and immediately sent the appropriate papers to BLM after receiving them from Chapin. Appellant contends that he has a right to the assignment. As proof of the transaction with Chapin, appellant submits a copy of a check made out to Chapin, dated February 7, 1984, and a copy of a "Service Agreement" between appellant and Chapin, signed by appellant on February 8, 1984, which authorized Chapin to obtain on appellant's behalf or otherwise transfer "an Alaska oil and gas lease involving 80 acres."

There is a problem with appellant's proof, however. Both the check and the "Service Agreement" describe the 80 acres as the S 1/2 NE 1/4 sec. 26, T. 8 S., R. 1 W., Copper River Meridian, Alaska. Appellant clearly is mistaken in his assertion that the February 8, 1984, transaction with Chapin, for which he submits proof, involved a partial assignment of lease AA-49169. This is not to say that appellant did not "purchase" the partial assignment of lease AA-49169 from Chapin on February 8, 1984, or at some time prior to Chapin's execution of the BLM assignment form on October 3, 1984. Appellant's submissions, however, do not constitute proof of such a purchase. Nevertheless, for purposes of disposition of this appeal, we need only accept that appellant was the assignee of the partial assignment filed on October 16, 1984, describing the lands in question.

Therefore, the present case involves two assignments of the same land (the SE 1/4 SE 1/4, SW 1/4 SE 1/4 sec. 35), one from Chapin to Zarr dated August 2, 1984, and the other from Chapin to appellant dated October 3, 1984. The lease assignment forms were filed with BLM, respectively, on September 4 and October 16, 1984, although the assignment to Zarr was not perfected until March 27, 1986. Both assignments were pending before BLM

on May 14, 1986, when BLM approved the assignment from Chapin to Zarr, effective April 1, 1986, and also issued a decision denying approval of the assignment from Chapin to appellant because the land had "previously been assigned." As we discussed recently in Herbert P. Kenney, Jr., 96 IBLA 84 (1987), this was not the correct approach for BLM to have taken in such a situation.

[1] As a general matter, BLM ordinarily approves a proposed assignment of an oil and gas lease filed in conformity with the applicable law, except in those cases when BLM finds a lack of qualifications of the assignee or lack of sufficient bond. Pardee Petroleum Corp., 98 IBLA 20, 24 (1987). However, the Department has long held that it will not act on a pending lease assignment, whether to approve or deny it, where the Department has "notice of a controversy between the parties as to the effect or validity of the assignment." Herbert P. Kenney, Jr., *supra* at 85. Rather, the Department will suspend action on the assignment until it has received notice that the controversy has been settled by negotiation or court action. This is in accordance with the Department's policy that it will not interfere in a private contract dispute.

In the present case, on May 14, 1986, BLM had two pending assignments for the same land. Clearly BLM had notice of a controversy. In approving the assignment to Zarr and denying approval of the assignment to appellant, BLM violated Departmental policy regarding the suspension of any action on either assignment. However, having done so, the Board will abide by the formula set forth in Kenney and return the parties to the status quo prior to denial of approval of the assignment to appellant. Accordingly, the Board will set aside the May 1986 BLM decision denying that approval and preclude further action with respect to the assignment to Zarr for a period of 90 days, during which time the parties will have an opportunity to institute steps to resolve the matter. The Board will not rescind approval of the assignment to Zarr at this time because the limitations placed on BLM are adequate to maintain the status quo and because rescission may ultimately prove unnecessary.

Therefore, for a period of 90 days from the date of the decision, BLM is instructed not to approve or disapprove any further assignments of the land involved herein (the SE 1/4 SE 1/4, SW 1/4 SE 1/4 sec. 35) or to take any action concerning the land. If, at the end of the 90-day period, no notice has been received by BLM of the initiation of any action by the parties involved to settle or otherwise resolve the matter of the conflicting assignments, BLM's approval of the assignment to Zarr will be allowed to stand without further action by BLM. See Herbert P. Kenney, Jr., *supra* at 86. If, however, within the 90-day period, BLM receives notice of the initiation of action to settle or otherwise resolve the matter, BLM should continue to defer any further action concerning the land involved herein until the conclusion of such initiated action.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM for further action consistent herewith.

Bruce R. Harris  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

R. W. Mullen  
Administrative Judge